



- (i) for an order that Defendants destroy all infringing goods and products and tooling used to make the infringing goods and products and any other products infringing the '351, '755, and '388 Patents;
- (j) for an order directing Defendants to file with the Court and serve upon Lincoln's counsel within thirty (30) days after entry of any permanent injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. § 1116 setting forth in detail the manner and form in which Defendants have complied with the injunction and order to destroy;
- (k) for an accounting to establish Lincoln's damages and for judgment against the Defendants awarding this damage amount together with legal interest from the date of accrual thereof;
- (l) for an assessment of costs against the Defendants;
- (m) for a finding that this action is exceptional and for an award to Lincoln of its reasonable attorney fees incurred in this action under 35 U.S.C. § 285;  
and
- (n) for such other and further relief as may be just and appropriate.

Respectfully submitted,

Dated: August 14, 2009

By: /s/ John S. Cipolla

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and Lincoln Global, Inc.

**PLAINTIFFS' DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Rule 38.1 of the Local Rules of this Court, Plaintiffs Lincoln Electric and Lincoln Global hereby demand a jury trial.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Case No. 1:09-cv-1913  
JUDGE DONALD C. NUGENT  
ORDER OF DISMISSAL

|                                       |   |  |
|---------------------------------------|---|--|
| The Lincoln Electric Company, et al., | ) |  |
|                                       | ) |  |
| Plaintiff,                            | ) |  |
|                                       | ) |  |
| vs.                                   | ) |  |
|                                       | ) |  |
| Kiswel, Ltd., et al.,                 | ) |  |
|                                       | ) |  |
| Defendants.                           | ) |  |

Plaintiffs have filed a Notice of Voluntary Dismissal (ECF #33) without prejudice of the Complaint in this action pursuant to Fed. R. Civ. P. 41(a)(1). In accordance with Plaintiffs' wishes, the Court hereby DISMISSES this action WITHOUT PREJUDICE, each party to bear its own costs.

IT IS SO ORDERED.

  
DONALD C. NUGENT  
United States District Judge

DATED: December 29, 2009

Defendants, Kiswel, Ltd.; Kiswel Co., Ltd.; Kiswel, Inc.; and Kiswel USA, Inc. (referred to herein as "Defendants"), and hereby complain and aver as follows:

1. This is an action for injunctive and monetary relief to recover for the damage caused by, and to prevent further damage arising from the unlawful and unauthorized use of Lincoln's intellectual property through the infringement of Lincoln's patents under 35 U.S.C. § 271 by Defendants. Specifically, Lincoln complains and avers that Defendants infringe claims of United States Letters Patent RE 40,351 for "MECHANISM FOR BRAKING THE UNWINDING OF A BUNDLE OF METALLIC WIRE HOUSED IN A DRUM" ("the '351 Patent"), United States Letters Patent 7,178,755 for "RETAINER RING FOR WIRE PACKAGE" ("the '755 Patent"), and United States Letters Patent 7,377,388 for "WELDING WIRE PACKAGE" ("the '388 Patent").

#### **THE PARTIES**

2. Plaintiff Lincoln Electric is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 22801 St. Clair Avenue, Cleveland, Ohio 44117. Lincoln Electric designs, develops, manufactures and sells welding products and accessories, including welding power sources, plasma cutters, and welding consumables such as welding electrodes or "welding wire" which are sold in bulk wire packages. Lincoln Electric is the exclusive licensee of the '351, '755, and '388 Patents.

3. Plaintiff Lincoln Global is a sister company of Lincoln Electric and is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 17721 Railroad Street, City of Industry, California 91748. Lincoln Global possesses extensive technical information and know-how relating to the development, manufacture and sale of welding products and supplies and owns an extensive intellectual property portfolio including patents and patent applications developed by Lincoln Electric

relating to welding products and consumables, including bulk welding wire packaging. Lincoln Global is the owner of the '351, '755, and '388 Patents.

4. On information and belief, Defendant Kiswel, Inc. is a corporation existing under the laws of Kentucky with a principal place of business at 7950 Dixie Highway, Florence, Kentucky 41042.

5. On information and belief, Defendant Kiswel USA, Inc. is a corporation existing under the laws of New Jersey with a principal place of business at 7950 Dixie Highway, Florence, Kentucky 41042.

6. On information and belief, Defendant Kiswel, Ltd. is a corporation existing under the laws of the Republic of Korea with a principal place of business at Heungkook Building, 43-1 Jujadong, Seoul, Republic of Korea, and having a facility at #58-2 Sunjoo-Dong, ChangWon-City, Kyung Nam, Republic of Korea.

7. On information and belief, Defendant Kiswel Co., Ltd. is a corporation existing under the laws of the Republic of Korea with a principal place of business at Heungkook Building, 43-1 Jujadong, Seoul, Republic of Korea.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this controversy concerning patent infringement pursuant to Title 35 U.S.C. § 271 and § 281 and Title 28 U.S.C. § 1331 and § 1338(a).

9. On information and belief, Kiswel, Inc. and Kiswel USA, Inc. manufacture, or cause to be manufactured, products that are purposefully directed into Ohio and this judicial district. On information and belief, Kiswel, Inc. and Kiswel USA, Inc. regularly conduct

business in Ohio, including selling and shipping their products in this judicial district. On information and belief, Kiswel, Inc. and Kiswel USA, Inc. have an established distribution network in Ohio and in this judicial district. On information and belief, Kiswel, Inc. and Kiswel USA, Inc. derive substantial revenue from the sales of their products in Ohio and in this judicial district. On information and belief, Kiswel, Inc. and Kiswel USA, Inc. have shipped and will continue to ship their products, including the infringing products, into this judicial district through a network of distributors including Airgas Great Lakes, Inc.

10. On information and belief, Kiswel, Ltd. and Kiswel Co., Ltd. manufacture, or cause to be manufactured, products that are purposefully directed into Ohio and this judicial district for sale by Kiswel, Inc., Kiswel USA, Inc., or other subsidiaries or agents of Kiswel, Ltd. and Kiswel Co., Ltd. On information and belief, Kiswel, Ltd. and Kiswel Co., Ltd. have an established distribution network in Ohio and in this judicial district and derive substantial revenue from the sales of their products in Ohio and in this judicial district. On information and belief, Kiswel, Ltd. and Kiswel Co., Ltd. have shipped and will continue to ship their products, including the infringing products, into this judicial district through a network of distributors including Airgas Great Lakes, Inc.

11. This Court has personal jurisdiction over the Defendants pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States based on at least the following: (a) on information and belief, Defendants regularly solicit and transact business in the State of Ohio and in this judicial district; (b) on information and belief, Defendants contract to supply goods in the State of Ohio and in this judicial district; (c) on information and belief, Defendants have committed acts in the State of Ohio and in this judicial district which constitute a tort; (d) on information and belief, Defendants purposefully direct



contacts with the State of Ohio and this judicial district by offering for sale, selling and/or shipping products that infringe the '351, '755, and '388 Patents, as alleged herein, in this judicial district; and (e) Defendants have shipped the infringing products into this judicial district through Defendants' established distribution network in Ohio.

12. Venue is proper in this judicial district pursuant to Title 28 U.S.C. §§ 1391 (b) and (c) and 28 U.S.C. § 1400(b).

### **FACTUAL ALLEGATIONS AND BACKGROUND**

13. Lincoln Global is the owner of U.S. Patent No. RE 40,351 ("the '351 Patent"), entitled "MECHANISM FOR BRAKING THE UNWINDING OF A BUNDLE OF METALLIC WIRE HOUSED IN A DRUM," which was duly and lawfully reissued on June 3, 2008, to Giancarlo Cipriani as inventor. A true and correct copy of the '351 Patent is attached hereto as Exhibit A. Lincoln Global is the owner of all right, title and interest in the '351 Patent, including the right to sue and recover damages for infringement of the '351 Patent, by virtue of an assignment recorded at Reel/Frame Number 011287/0608 with the U.S. Patent and Trademark Office.

14. Lincoln Global is the owner of U.S. Patent No. 7,178,755 ("the '755 Patent"), entitled "RETAINER RING FOR WIRE PACKAGE," which was duly and lawfully issued on February 20, 2007, to Christopher Hsu, Elliot K. Stava, and David J. Barton as inventors. A true and correct copy of the '755 Patent is attached hereto as Exhibit B. Lincoln Global is the owner of all right, title and interest in the '755 Patent, including the right to sue and recover damages for infringement of the '755 Patent, by virtue of an assignment recorded at Reel/Frame Number 014354/0679 with the U.S. Patent and Trademark Office.

15. Lincoln Global is the owner of U.S. Patent No. 7,377,388 ("the '388 Patent"), entitled "WELDING WIRE PACKAGE," which was duly and lawfully issued on May 27, 2008, to Christopher Hsu, David J. Barton, and Michael A. Carroscia as inventors. A true and correct copy of the '388 Patent is attached hereto as Exhibit C. Lincoln Global is the owner of all right, title and interest in the '388 Patent, including the right to sue and recover damages for infringement of the '388 Patent, by virtue of an assignment recorded at Reel/Frame Number 016020/0365 with the U.S. Patent and Trademark Office.

16. Lincoln Electric is the exclusive licensee of the '351 Patent, '755 Patent, and '388 Patent.

**COUNT I**  
**(Infringement of the '351 Patent)**

17. Lincoln incorporates by reference the allegations set forth in Paragraphs 1-16 of this Complaint as though fully set forth herein.

18. Defendants make, use, import, sell, and/or offer for sale in the United States bulk welding wire in containers, including but not limited to Defendants' 900 lb. and 550 lb. MAG Welding Solid Wire containers ("infringing products"), that infringe at least claims 5, 6, 7, 12, and 13 of the '351 Patent in violation of 35 U.S.C. § 271.

19. Defendants have been and continue to infringe the '351 Patent by making, using, importing, selling, and/or offering for sale the infringing products in the United States, including in this judicial district, and have been inducing and continue to induce others to do the same, in violation of 35 U.S.C. § 271.

20. Defendants will continue to infringe the '351 Patent unless enjoined by this Court.

21. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendants' infringement of the '351 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

22. On information and belief, the Defendants have profited and will continue to profit by their infringing activities. Lincoln has been damaged by Defendants' infringing activities. The amount of monetary damages that Lincoln has suffered by Defendants' infringing acts set forth above cannot be determined without an accounting.

**COUNT II**  
**(Infringement of the '755 Patent)**

23. Lincoln incorporates by reference the allegations set forth in Paragraphs 1-22 of this Complaint as though fully set forth herein.

24. Defendants make, use, import, sell, and/or offer for sale in the United States bulk welding wire in containers, including but not limited to the infringing products, that infringe at least claim 38 of the '755 Patent in violation of 35 U.S.C. § 271.

25. Defendants have been and continue to infringe the '755 Patent by making, using, importing, selling, and/or offering for sale the infringing products in the United States, including in this judicial district, and have been inducing and continue to induce others to do the same, in violation of 35 U.S.C. § 271.

26. Defendants will continue to infringe the '755 Patent unless enjoined by this Court.

27. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendants' infringement of the '755 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

28. On information and belief, the Defendants have profited and will continue to profit by their infringing activities. Lincoln has been damaged by Defendants' infringing activities. The amount of monetary damages that Lincoln has suffered by Defendants' infringing acts set forth above cannot be determined without an accounting.

**COUNT III**  
**(Infringement of the '388 Patent)**

29. Lincoln incorporates by reference the allegations set forth in Paragraphs 1-28 of this Complaint as though fully set forth herein.

30. Defendants make, use, import, sell, and/or offer for sale in the United States bulk welding wire in containers, including but not limited to the infringing products, that infringe at least claims 1, 2, and 11 of the '388 Patent in violation of 35 U.S.C. § 271.

31. Defendants have been and continue to infringe the '388 Patent by making, using, importing, selling, and/or offering for sale the infringing products in the United States, including in this judicial district, and have been inducing and continue to induce others to do the same, in violation of 35 U.S.C. § 271.

32. Defendants will continue to infringe the '388 Patent unless enjoined by this Court.

33. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendants' infringement of the '388 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

34. On information and belief, the Defendants have profited and will continue to profit by their infringing activities. Lincoln has been damaged by Defendants' infringing

activities. The amount of monetary damages that Lincoln has suffered by Defendants' infringing acts set forth above cannot be determined without an accounting.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Lincoln Electric and Lincoln Global pray:

- (a) for a judgment that Lincoln Global owns the '351, '755, and '388 Patents;
- (b) for a judgment that the '351 Patent is valid and enforceable;
- (c) for a judgment that the '755 Patent is valid and enforceable;
- (d) for a judgment that the '388 Patent is valid and enforceable;
- (e) for a judgment under Count I that Defendants have infringed at least claims 5, 6, 7, 12, and 13 of the '351 Patent;
- (f) for a judgment under Count II that Defendants have infringed at least claim 38 of the '755 Patent;
- (g) for a judgment under Count III that Defendants have infringed at least claims 1, 2, and 11 of the '388 Patent;
- (h) for a preliminary and permanent injunction under Counts I, II, and III against further infringement of the '351, '755, and '388 Patents by Defendants, their officers, directors, employees, agents, licensees, servants, successors, and assigns, and any and all persons acting in privity with Defendants, either directly or by inducing others to infringe;